

## **Fitness For duty: the Clinical Prospective**

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### **Abstract**

In any work setting employees ask for job accommodations or other work adjustments based on medical needs. Fitness For Duty (FFD) exams refers to the wide range of these types of medical requests received at the workplace. Supervisors evaluating these requests must be aware of applicable regulatory statutes that provide specific protection to the employee. To obtain the protection of these statutes the employee's request must meet the medical definition described in the statutes. Since supervisors frequently do not have the medical expertise to make an informed decision, one federal agency evaluates all requests for FFD by using an interactive process between the physician and the supervisor or human relations specialist. This paper reviews three major three job types that have physical standards and three regulatory statutes applicable to positions without specified physical standards. Some federal agencies evaluates all requests for FFD by using an interactive process between the government physician and the supervisor or human relations specialist. The paper ends with clinical observations on the outcome of processing a large number of accommodation and FFD requests.

### **Introduction**

A common occurrence in any work setting is for supervisors to receive from their subordinates a physician's note indicating a disease process or other medical condition, which restricts their work ability. Many supervisors take those notes at face value and make changes in the employee's work situation. Others may question this note and ask whether the employee is still fit to perform work required of them. Questions related to Fitness for Duty (FFD) also arise when a practitioner conducts a medical exam to place a newly hired individual into a particular work group. Another scenario common to the workplace is evaluating an employee returning after an injury or illness. In the aviation maintenance and repair industry the FFD has major implications.

Questions that arise in the FFD exam typically focus on the employer granting some type of accommodation for the job. Medical factors often influence the supervisor's decision. For example, an ergonomic chair is a logical accommodation for an employee with low back pain. A more complicated or poorly defined medical diagnosis requires more professional review especially if the employee requests an accommodation with financial ramification such as changing an unauthorized absence from leave without pay to advanced sick leave.

Regulatory factors also influence the outcome of a FFD evaluation. For example, a position that has associated specific medical standards presents a different resolution of the FFD determination than one without these standards. Granting accommodations at work also involves satisfying regulatory statutes which address social goals other than prescribed physical standards.

The purpose of this paper is to describe a process for reviewing medical questions related to FFD examination. The process emphasizes the employee's clinical manifestations applied to the applicable regulatory directives. The process requires an interaction between the company or government physician and the supervisor or Human Relations Specialist. By using this process supervisors can provide insights to the reviewing physician who must evaluate the employee's medical note. The first part of this paper reviews regulatory requirements that influence FFD exams. The second part presents the medical review process. The third part shows the results of this process in comparison with the published outcomes from the Equal Employment Opportunity Commission.

### **Positions that Have Prescribed Physical Standards**

Some positions carry with them responsibility for public safety. Most obvious are airplane pilots, commercial drivers, firefighters and police. For these jobs, governmental agencies have issued regulatory requirements that both an applicant and an incumbent must meet to receive a medical certification for the job. Table 1 shows these standards applicable to pilots, drivers and fire fighters. For pilots and drivers the medical standards are defined in regulation and are legally enforceable. For fire fighters, the National Fire Prevention Association has developed medical requirements based on a consensus of firefighters and published as standard 1582. While this is a consensus standard most municipalities and hiring agencies will disqualify an individual who does not meet these medical standards.

Diabetes Mellitus, essential hypertension, and hearing loss are common in the general population as well as among pilots, drivers, and fire fighters. Table 1 illustrates how the medical standard vary for each of these conditions. For example, blood pressure for a commercial driver must be less than 160/90 to meet full qualification. Higher pressures permit a time-limited qualification but pressures above 180/104 are disqualifying. For aviation, the Federal Air Regulations will permit medical certification for blood pressures up to 155/95. Beyond that level a pilot must obtain a medical assessment. For the fire fighter, the NFPA standard 1582 lists medical condition as either category A that are disqualifying, and category B that may be disqualifying based on a case by case determination from the physician. Hypertension is a category B condition up to a pressure of 180/100 with no target organ damage. Table 1 presents similar comparison for Diabetes Mellitus and hearing loss.

Table 1: Comparison of medical standards for commercial drivers, pilots, and firefighters.

### **Regulations for Accommodation in Positions without Physical Standards**

Most individuals fill positions which do not require the incumbent to maintain a specific physical condition or standard. A note from the employee's physicians does not mean that the supervision must either ignore or concur with the requested for a job change. Three different laws apply to individuals in all job position. These three laws provide a framework for subsequent supervisor action.

Table 2 compares the Americans with Disability Act (ADA) or the Disability Discrimination Act (DDA) in the UK, the Family and Medical Leave Act, and the Federal Personnel Manual definition of medical documentation. The United Kingdom's Disability Discrimination Act (DDA) is included to contrast how other countries approach the same issue. Both the ADA and DDA prohibit job description and both provide a unique definition of a disability. For the ADA a disability is a physical or mental impairment that substantially limits one or more major life activities (a). For the DDA a disability has substantial and long-term effects on that person's ability to carry out normal day to day activities (b). Individuals whose medical condition meets the definition of a disability receive protection of the law. The Family and Medical Leave Act (FMLA) entitles an employee to unpaid absence for certain family and medical need. Entitlement to benefits of the FMLA requires the employee to have a "Serious Health Condition" (c). This condition means an illness, injury, impairment or physical or mental condition that meets one of five conditions listed in table 2. For a federal civilian employee to receive a medical qualification determination, that employee must provide medical documentation from a licensed physician. This documentation must contain information that address seven specific criteria listed in table 2 (d). While this documentation applies only to federal civilian employee it is an example of an enforceable standard that effects the superior's action for granting job accommodations. Union contracts frequently have definitions of medical conditions that also require supervisors to allow union members to receive sick leave or some other job accommodation.

Table 2: Comparison of regulations applicable to Accommodations

<b>Reference</b>	<b>Purpose</b>	<b>Applicable to</b>
American With Disabilities Act	Prevent job discrimination	Disability – physical or mental impairment that substantially limit one or more major life activities
Disability Discrimination Act 1995 (UK)	Prevent job discrimination	Disability – substantial & long term adverse effect on that person's ability to carry out normal day to day activities
Family Medical Leave Act	Provide unpaid leave for certain family & medical needs	Serious Health Condition 1. Incapacity of 3 or more days 2. Pregnancy , childbirth, prenatal care 3. Chronic health condition 4. Condition for which treatment not effective 5. Receive multiple treatment
5 CFR 339.104,	Medical Qualification Determination for Federal civilian employees	Medical documentation 1. History 2. Clinical findings 3. Diagnosis 4. Prognosis 5. Impact on activities 6. Likelihood of sudden incapacitation

		7. Narrative of medical basis for conclusion
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Both tables 1 and 2 provide the regulatory framework for the medical evaluation of an employee's ability to work. Each of these regulations have an extensive regulatory history which a supervisor would not be expected to review. From both the medical and management perspectives these regulations impact how the supervisor may respond to the medical note from the employee's physician. Listed below is the process for a medical review by a licensed physician. The purpose of the medical review is to advise management if the employee's medical condition meets the applicable regulatory standard.

### **FFD Review with Prescribed Medical Standards**

A FFD exam for these employees is a matter of determining the nature of the employee's condition and comparing that condition to the applicable physical standards. The reviewing physician must be aware of the applicable standards. In the case of airplane pilots, the physician must be designated by the FAA as an Aviation Medical Examiner. Medical standards are typically written within broad guidelines giving the reviewing physician much latitude in the interpretation. Nevertheless conditions such as insulin requiring diabetes mellitus will disqualify an application as a pilot or commercial driver. Hearing standards (see table 1) are another example of rigid parameters specified for qualification. Some medical standards permit variation from specified standards. For example, the diabetic pilot could obtain a third class medical certificate through the FAA's special issuance procedures. On the other hand, medical standards for the commercial drivers do not permit this variation.

### **FFD Review Process with Accommodation**

When specific standards do not exist, the basis for medical determination of FFD will hinge on the definition of disability, serious health condition, or satisfaction of a definition of medical documentation. Table 3 lists the information the reviewing physician will need. First is a specific note from the supervisor or human relations specialist stating what the employee is requesting. Some companies, including the Federal Government, require employees to complete forms specific to their requests for the ADA or FMLA. These forms allow an employee to request specific accommodations under the ADA or specific periods of absence under the FMLA. The reviewing physician will also need relevant personnel and medical information as well as a job description that describes the employee's current duties. Finally, the physician will need a medical release of information signed by the employee. This release allows the employee's physician to discuss medical conditions with the reviewing physicians. The release also permits the reviewing physician to share with the employer relevant medical history.

Table 3: Information that a Supervisor or Human Relations Specialist sends to physician for review of FFD

<b>Information</b>	<b>Purpose</b>
Explanatory note of introduction	States what is the specific purpose of inquire

Relevant personnel history	For evaluation
Medical documentation received	For evaluation
Position description	Describes current duties and expectations of the job
Release to talk directly to the personal physician, signed by employee	Allows the personal physician to discuss the patient's condition with the company/agency's physician

### Physician Involvement in the Review Process

With the information outlined in table 3, the reviewing physician can address the medical conditions related to this employee's request. Table 4 specifies physician actions based on questions that must be addressed during the medical review. For example, the physician evaluating the employee's medical documentation will be asking:

1. Does the diagnosis make sense?
2. Would the diagnosis be expected to cause the claimed disability?
3. Is it supported by medical evidence?

Similar questions aid in determining whether a disability is present and compare the employee's current capabilities to the job's essential elements. Telephone interview with the employee's physician provides critical information to answer the reviewing physician's questions.

Table 4: Questions addressed by the evaluating physician in a FFD determination with no relevant physical standards

Agency Physician Action	Significant questions
Evaluation medical documentation	<ol style="list-style-type: none"> <li>1. Does the diagnosis make sense</li> <li>2. Would the diagnosis be expected to cause the claimed disability?</li> <li>3. Is it supported by medical evidence?</li> </ol>
Is disability present?	<ol style="list-style-type: none"> <li>1. Is some impairment in function documented</li> <li>2. Is disability consistent with diagnosis and alleged severity of illness?</li> <li>3. Would the level of impairment be expected to improve?</li> </ol>
Compare capability to Job description	<ol style="list-style-type: none"> <li>1. What are supervisor's impression of capabilities</li> <li>2. Any recent changes in performance levels?</li> <li>3. Are there adverse personnel actions?</li> </ol>
Give a medical opinion as to whether requested accommodation will enable disabled employee to perform essential function of job	<ol style="list-style-type: none"> <li>1. Does the accommodation match the disability?</li> <li>2. Does a medical basis exist for the accommodation?</li> </ol>

The final outcome of the review is a medical opinion on whether the employee's condition meets the definition of a disability under the ADA, a serious health condition under the FMLA or other condition as may be defined in a union contract or definition of medical documentation. The reviewing physician's role is to advise the supervisor or employee that the employee's medical condition meets a definition. Once this definition is met, the employee has responsibility to fulfill the requirements specified under the ADA, FMLA, or union contract. In other words, for the ADA, the physician does not determine the specific accommodation that the employer must provide. The employer determines the essential elements of job and is responsible to select an accommodation that matches the medical limitation specified by the reviewing physician.

### Results of the Medical Review Process

The Equal Employment Opportunity Commission (EEOC) is responsible for adjudicating requests for accommodation under the ADA. For the period of July 26, 1992 to September 30, 1999, the EEOC summarized 18,694 cases based on their impairment category (e). Table 5 presents the ten most frequent impairment categories with their cumulative percentages. For the period November 1, 2000 to December 31, 2001 the author, acting as a physician reviewer, evaluated 157 requests for accommodation from federal agencies. Table 5 presents the top ten diagnoses expressed in terms of the same impairment categories as used by the EEOC.

Analysis of table 5 shows that six of the top ten impairment categories are common to both the EEOC and the physician reviewer. Common impairment categories are orthopedic and structural impairments of the back, non-paralytic orthopedic impairment, depression, vision impairments, other psychiatric disorders, and heart cardiovascular impairment. The differences in impairment categories are in psychological categories of anxiety disorders and manic depression, which are more common in cases presenting to the physician reviewer. Physiologic diagnoses of diabetes and hearing impairment are more common for the EEOC review.

Table 5: Comparison of the ten impairments that presents most frequently as the basis for accommodations to the EEOC and the physician's review:

<b>EEOC Impairment*</b>	<b>Percentage</b>	<b>Reviewer impairment **</b>	<b>percentage</b>
Other Diagnoses	19.6	Orthopedic & Structural impairments of the back	17
Orthopedic & Structural impairments of the Back	15.6	Non-paralytic orthopedic impairment	13
Regarded as disabled	11.9	Other Disabilities	7
Non-paralytic orthopedic impairment	8.2	Anxiety Disorders	7
Depression	4.7	Depression	6
Heart Cardiovascular impairments	3.8	Brain-Head impairment	5
Hearing Impairments	3.7	Vision Impairments	5
Diabetes	3.6	Other psychological	4

		disorders	
Other psychological disorders	3.7	Manic depressive disorders	4
Vision impairments	3.4	Heart cardiovascular impairments	4

\* Merit factor resolutions include settlements, withdrawals with benefits, successful conciliations and unsuccessful conciliations, July 26, 1992 to September 30, 1999, cases total: 18, 694

\*\* Physician Review of 157 case from November 1, 2000 to December 31, 2001 for medical issues related to accommodation under the American With Disability Act, serious health condition under Family Medical Leave Act, and other benefits for medical determinations

Within federal agencies requests for accommodations are not limited to any one-grade level or position type. Review of the data shows that employees in all grade level ask for accommodation through the physician reviewer. Among job types, those in customer service positions appear to be more likely to request accommodation or other FFD exams than employees in specialty areas such as computer science, accounting, or professionals. In spite of the low number of requests, these professions do ask for special accommodations.

## Conclusion

Request for Fitness For Duty exams arise from positions that have physical standards as well as those without published standards. Employees in all positions can request the benefit of public laws such as the ADA and FMLA. An interactive process between the supervisor or human relations specialist and the company or agency physician provides the basis for the medical determination of the FFD examination. Comparison of the data from a governmental agency's physician review process with the results from the Equal Employment Opportunity Commission indicates that the caseload is similar. All grade levels of personnel in all trades ask for accommodations. Requests for accommodation must first satisfy specific medical criteria for the application of the ADA, FMLA or other definition of medical documentation.

## References

- a. The American With Disabilities Act (title 1), July 26, 1990, 42 USC Sections 12112
- b. Howard GS and Cox RAF, *The Disability Discrimination Act of 1995*, Chapter 3 in Fitness for Work Third Edition by RAF Cox Oxford Press, 2000
- c. Family and Medical Leave Act, regulation 29 CFR part 825.114
- d. Medical Qualification Determination, 5CFR 339.102
- e. Webb site for the U.S. Equal Employment Opportunity Commission, Statistics Section, [www.eeoc.gov/stats/ada-merit.html](http://www.eeoc.gov/stats/ada-merit.html), on January 6, 2002